NECESSITY FOR EXCLUSIVE FEDERAL CONTROL OVER STATE AND INTERSTATE RATES

By Edgar J. Rich

On the 28th day of December, 1917, the President took over the railroads of the United States and assumed control of all their functions, including the regulation of rates. The railroads are now being operated as a national system, and the state commissions are retained merely in an advisory capacity, to perform local functions to such an extent as the Director General may determine. At hearings held before committees of Congress during the month of January, 1918, representatives of the President urged that no legislation be enacted which should in any degree hamper the operation of these railroads as a national transportation system; that control over revenue was essential in order to maintain the efficiency of service. The war has thus emphasized the essentially national character of railroad transportation. The highest efficiency is necessary for a successful mobilization of the national resources of the country, and to that end the supreme control over transportation has been placed in the hands of one supreme authority. State lines have been eliminated in transportation to the same extent that they have been eliminated in every other line of the war's activities. War is exclusively the nation's business, and all the engines of warfare, of which the railroads are the greatest, must be under the exclusive power of the Commander-in-Chief.

To what extent do the same principles of exclusive control apply in times of peace? We must begin now to perfect a system of regulation which shall best be adapted to the nation's needs when these railroad systems are turned back to their owners after the war has ended. It is inconceivable that an instrumentality whose essentially national character has been demonstrated during the stress of a titanic conflict should again become subject, to the same extent as heretofore, to the conflicting and selfish control of local political authorities. But as the problem is after all essentially a peace problem, its solution must be attempted with reference to the normal conditions of commercial intercourse in times of peace. The aspect

of the problem to which this article is directed is whether the federal government should regulate all railroad rates both state and interstate.

LOCAL CONTROL OVER LOCAL AFFAIRS IS ESSENTIAL

It is clear that Congress cannot exercise power over intrastate transportation unless, in order to set interstate commerce free, it is necessary to assume such power. The constitutionality of its exercise depends upon whether such sweeping authority is necessary in order to prevent interruption to interstate commerce.

Congress cannot regulate commerce which is strictly local and which has no effect upon commerce between the states under the guise of the exercise of its plenary power over interstate commerce. The mere fact that the great preponderance of railroad traffic crosses state lines is no justification for the assumption of control over the relatively small amount of traffic which moves between points within the state, unless there is some interference with interstate traffic by reason of the exercise of state authority over this state traffic. It may be illogical and embarrassing for railroads to submit to the vexatious regulations of many jurisdictions; it may be contrary to sound principles of organization to be compelled to take their affairs before several tribunals when one tribunal could fully exercise all the authority necessary to protect the public interests. But our form of government is not based upon the theory of efficiency; it is based upon the theory of democracy, and local control over purely local matters is the very corner stone of democracy. It is with full appreciation of the wisdom of retaining local control over purely local affairs that the writer approaches the subject of exclusive federal control over railroad rates.

NATIONAL CONTROL OVER NATIONAL AFFAIRS IS ESSENTIAL

Under our American form of government it is recognized that certain functions of government, the exercise of which affects the nation as a whole, must be exercised by an authority which represents all the people. The powers delegated to Congress by the several states are therefore the powers which are national in their scope. In granting these powers to the national government, a state surrendered certain control over affairs within the limits of its boundary. Each state, however, gained more than an equivalent

in the freedom from annoyance through a like surrender of power on the part of every other state.[1]

Each state surrendered to the federal government the control over those things which affected interstate commerce; it did not surrender control over those activities which did not affect interstate commerce. Therefore the constitutionality of an assumption of exclusive control of all rates depends upon the answers to the questions, (1) does the exercise of the authority of the state over intrastate rates affect, or threaten to affect, interstate commerce, and (2) is the complete control over all intrastate rates by federal authority necessary in order that an effective method may be established for the elimination of state interference with interstate commerce.

HOW LOCAL CONTROL OVER INTRASTATE RATES AFFECTS INTERSTATE TRAFFIC

The effect of intrastate rates upon the movements of interstate commerce is shown by adjudicated cases too numerous even to cite. A reference to the more important of these cases will clearly indicate how the movements of traffic in interstate commerce are directly influenced by adjustments of state rates.

For more than fifteen years the shippers of Memphis, Tenn., have complained that traffic to and from points in Arkansas, which is naturally tributary to Memphis, has been diverted to Little Rock and Pine Bluff, Arkansas, by reason of a low scale of rates put into effect by the Arkansas Commission. In 1905 the Interstate Commerce Commission found that in the case of many articles the disparities in rates are greater than the profits ordinarily made by jobbers.[2]

Again in 1915 the Interstate Commerce Commission made a thorough investigation of the effect of the state rates in Arkansas upon traffic between Arkansas points and Memphis, and in its findings states:

> It is undisputed that complainants at Memphis are actually competing with the shippers located at Arkansas points, and that in many instances the Memphis

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[1] *See* masterly address by Alfred P. Thom before the State Bar Association of Tennessee, June 25, 1915, entitled "A Right of the States."

[2] In the matter of Freight Rates between Memphis and points in Arkansas 11 I. C. C. 180 (1905).

dealer has been driven from Arkansas markets by the competition of the merchants and shippers of that state. The Memphis shippers being excluded from Arkansas on account of these state-made rates, Arkansas shippers and merchants are unduly preferred, while the Arkansas consumer is cut off from the competing Memphis market.[3]

It seems hardly necessary to refer to "The Minnesota Rate Cases."[4] There are facts set forth in the opinion in that case which are of striking significance. The state-made rates to the border cities were materially lower than the interstate rates to the cities just over the state line. The Circuit Court found that if discrimination were to be prevented, the reduction of the state rates to Moorhead, Minn., on the Northern Pacific Railroad, would necessitate the reduction in rates on that railroad to Fargo in North Dakota, just over the line, which in turn would necessitate reductions to other points in Dakota, which in turn would in the same way affect rates in Montana, and so on to the Pacific Coast. And yet the Minnesota intrastate traffic on the Northern Pacific, in the year under investigation (1906) was only 2.67 per cent of its entire freight business, and only 5.79 per cent of its entire passenger business![5]

In 1912–13 the Interstate Commerce Commission made a most exhaustive investigation of express rates and established the so-called uniform zone and block system for all interstate express movements in the United States. After it had been put into effect the same system was submitted to the commissions of all the states and forty states adopted the same system and basis of rates. South Dakota was one of the states which did not adopt it, but instead put into effect rates which were 40 per cent lower than those approved by the federal tribunal and by most of the state commissions.[6] This resulted in a complaint by commercial interests of Sioux City, Iowa, before the Interstate Commerce Commission, in which it was alleged that Sioux City was at a distinct disadvantage in the markets of South Dakota in competition with the jobbing towns of that state.

[3] *City of Memphis* v. *C. R. I. & P. Ry.*, 39 I. C. C. 256, 263 (1916).
[4] 230 U. S. 352 (1913).
[5] *Shepard* v. *Northern Pacific Railway Co.*, 184 Fed. 765, 776 (1911).
[6] *American Express Co.* v. *Caldwell*, 244 U. S. 617 (1917).

The Commission found that:

> These differences in rates place a burden on interstate shippers and give a corresponding advantage to intrastate shippers, thus accomplishing an inevitable restriction of shipments in interstate commerce or shrinkage of profits.[7]

It is immaterial what the motive may be for imposing schedules of state rates lower than rates for transportation across state lines under similar circumstances and conditions. If such an adjustment of rates does in fact directly affect interstate commerce, the action of the state authorities is an interference with commerce which the constitution declares shall be subject to federal regulation. But it is not without interest to note the frankly avowed motives of the Texas Railroad Commission to adjust rates in such a way as to check traffic movements from other states in order to build up distributing centers and manufacturing plants within that state. In the celebrated Shreveport case[8] the Interstate Commerce Commission said:

> There appears to be little question as to the policy of the Texas Commission. It is frankly one of protection to its own industries and communities.

It then proceeds to quote from reports of the Texas Commission in which a definite protective policy is declared as the underlying principle in making its rate adjustments. This is set forth and summarized in one sentence by the Texas Commission,

> To Texas as a whole it is of the most vital concern that there should be within her limits at proper places jobbing and manufacturing establishments.[9]

And how does the Texas Commission go about this self-imposed duty of fostering home industry by rate adjustments? Shreveport, in Louisiana, has been supplying the markets in eastern Texas. It must be shut out. Therefore rates must be made so low from distributing and manufacturing centers in Texas that the country stores and the consumers will be compelled to trade in the home markets. Generally speaking the Texas rates are about half what the rates are from Shreveport to points in Texas for the same distances—and the Interstate Commerce Commission finds that the circumstances and conditions for interstate and state traffic are

[7] *Traffic Bureau of Sioux City* v. *American Express Co.*, 39 I. C. C. 703 (1916).

[8] *Railroad Commission of La.* v. *St. Louis Southwestern Ry. Co.*, 23 I. C. C. 31, 35 (1912).

[9] *Ibid.* p. 35.

substantially similar. For example, if a farmer in Marshall, Texas, wants to buy a wagon he finds that he can send to Dallas, 147 miles away and pay a freight rate of 36.8 cents per hundred pounds, whereas if he buys in Shreveport, which is only 42 miles away, he must pay 56 cents per hundred pounds. Or a man at Longview, Texas, can buy his furniture at Dallas, 124 miles from home, and pay a rate of 24.8 cents per hundred pounds, whereas if he buys in Shreveport, 65 miles from home, he must pay 35 cents per hundred pounds.[10] Such a rate adjustment certainly is as effective as a protective tariff; it directly interferes with the movement of trade through preferential adjustment of transportation charges.

These cases which have been cited are merely illustrative of a situation which exists, to a greater or less extent, in almost every section of the country. Since the Shreveport case was decided in 1912 more than one hundred complaints have been filed with the Interstate Commerce Commission in which it is alleged that state-made rates discriminate against interstate rates. Each state which secures a selfish advantage for its industries through the fixing of low rates simply spurs on its neighbor to seek to conserve its trade to its citizens. Louisiana bitterly complained about the selfish policy of Texas, but it in its turn established a basis of rates which tended to compel its citizens to trade in Louisiana to the disadvantage of industry in Mississippi. Each state seeks to outdo its neighbor in restricting interstate trade.

These illustrations show that the authority of the state over intrastate rates directly affects interstate commerce. The menace is growing more serious each year, and unless effectively checked it will result in serious interference with the right which the citizens of every state have under the constitution to trade freely with the citizens of every other state. This is not a mere technical right—it is a right which lies at the basis of commercial prosperity.

We are drifting back to the intolerable conditions which prevailed under the Confederation, when New York imposed duties on dairy and farm products coming from New Jersey and on firewood from Connecticut; when Connecticut imposed duties on articles imported from Massachusetts; when Massachusetts exacted export duties on calf skins and other commodities, and when almost every state sought to exclude the products of every other state which

[10] *Houston & Texas Ry. Co.* v. *U. S.*, 234 U. S. 342 (1914).

came in competition with its own products, or to retain its own peculiarly prized products at home. The principal reason for the adoption of the Constitution, as every reader of history knows, was to give to all the people equal commercial opportunities, but today the railroad rate-making policy of many of the states is seriously infringing on those opportunities.

DOES A REMEDY EXIST IN THE POWER OF THE INTERSTATE COMMERCE COMMISSION TO REMOVE DISCRIMINATION?

But it is urged that an ample remedy exists, and that it is going beyond the necessities of the case, and perhaps beyond the constitutional power of Congress, to vest in a federal tribunal all power over all rates, both state and interstate. The Shreveport case[11] is cited as authority for this. In that case the Interstate Commerce Commission found that the Texas-made rates were unduly prejudicial to points in Louisiana; that the interstate rates were reasonable. But the Commission had before it the problem of removing the discrimination. What it said about the reasonableness of the interstate rates was largely in the nature of dicta. The Commission clearly indicated that the discrimination could properly be removed by the railroads by increasing the state rates to the basis of the interstate rates. The order of the Commission, which was before the Court, however, simply ordered the discrimination removed, and obviously a discrimination may be removed by reducing the higher rate (in this case the interstate rate) to the level of the lower rate, as well as by raising the lower rate to the basis of the higher rate. The essential part of the order is as follows:

> It is further ordered, That the defendant . . . . cease and desist . . . . from exacting any higher rates for the transportation of any article from Shreveport, La., to Dallas, Tex. . . . . than are contemporaneously exacted for the transportation of such articles from Dallas, Tex., towards said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

The carrier is left free to comply with the order in any one of three ways: (1) by raising the lower rates to the basis of the higher rates; (2) by lowering the higher rates to the basis of the lower rates; or (3) by raising one and reducing the other to a common level. The carrier can therefore comply with the order of the fed-

[11] *Houston & Texas Ry.* v. *United States*, 234 U. S. 342 (1914).

eral Commission, and at the same time comply with the order of the state commission by reducing its interstate rates to the basis of the state rates. And in this way the state has forced a basis of rates upon interstate commerce which is lower than the federal tribunal has found to be a reasonable basis. If the carrier chooses, however, to adopt the higher basis on all traffic it at once becomes subject to the interminable litigation such as has grown out of this Shreveport case. This particular case has been in the courts for years and no relief is in sight. The discrimination has existed for more than twenty years.

The Supreme Court in this case lays down the principle that when the Commission finds that a discrimination exists between the interstate and the intrastate rates and that the interstate rates are not unreasonably high the carrier *may* remove the discrimination by increasing the intrastate rates. It is not *compelled* to remove it in that way. There are very practical reasons why a railroad would prefer to follow the easier course of removing the discrimination by reducing the interstate rates. The states have almost unlimited powers over the corporations which receive their charters from the states. Except in a comparatively few cases the charters are subject to amendment and repeal. By antagonizing the state authorities the railroad places itself in a difficult and almost impossible position. There may not be serious danger of the repeal of a charter, but there is menace of amendment. Moreover if the railroad desires an extension of powers it is seriously embarrassed by its disregard of the state laws. A striking instance of this is afforded by a conflict of authority which arose in the state of New Hampshire.[12] In 1883 the legislature passed an act authorizing the consolidation of railroads provided rates should not be raised on the lines thus consolidated. The Boston and Maine Railroad raised its rates. The state court held that the statute applied to interstate rates as well as to state rates, and injunction proceedings were begun in 1907. The railroad asked the legislature to repeal the statute. For ten years there was litigation before the courts, hearings before the Public Service Commission, and appeals to the legislature, and it was not until 1917 that the statute was amended, and

[12] *See* reports of New Hampshire Public Service Commission beginning with Volume I (1911) to date.

then only to the extent of giving to the Public Service Commission the same power over rates that the legislature had claimed. In other words the judgment of an expert tribunal has been substituted for the inflexible barrier of statutory restriction. But the state has not relinquished its claim to control interstate rates. It would not be asserted that the state could fix interstate rates against the protest of the railroad nor that it could compel a reduction in interstate rates, nor restrain the railroad if it should file a schedule of such rates which did not meet the approval of the state commission.

But the assertion is made that the railroad can comply with the state statute by *refraining* from filing all such schedules. In 1913 the Interstate Commerce Commission investigated the subject of rates on the Boston & Maine Railroad and found that an increase in rates was necessary. But the control which the state of New Hampshire claimed to have over interstate rates prevented any effective adjustment of rates without the consent of that state. As prompt action was necessary the Interstate Commerce Commission, through Commissioner C. A. Prouty, and the State Commissions of Maine, Vermont and Massachusetts, as well as of New Hampshire, through which states the Boston & Maine Railroad runs, agreed that the rate adjustment should be worked out by the Public Service Commission of New Hampshire.

In the report of the Conference of State Commissions, presided over by Commissioner Prouty, the following significant statement occurs:

> The commission of New Hampshire under the peculiar circumstances obtaining in that state, must approve rates before they can be established.
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> When the Boston & Maine leased the roads located in New Hampshire the legislature of that state provided that the leases should be upon condition that no advance in rates, either state or interstate, should ever be made. Subsequently advances were in fact made and proceedings were begun attacking these advances. The Supreme Court of New Hampshire held that the obligation not to advance rates was binding upon the Boston & Maine even as to its interstate charges. Assuming that this decision is wrong as to interstate rates, and that the Boston & Maine might, notwithstanding the condition upon which these leases were taken, advance its interstate transportation charges, still it is evident that to do so might avoid the leases themselves and therefore disrupt the Boston & Maine system. As a practical matter, therefore, the condition is obligatory. The legislature of New Hampshire, recognizing that possibly in justice to this company its transportation charges should be increased, has provided that the

commission of that state may permit such advances, but that no advances shall be made until they have been affirmatively sanctioned by that body.

It results, therefore, that the Boston & Maine can advance no rates, either state or interstate, which apply within the limits of the state of New Hampshire without the approval of the Commission of that state.[13]

This situation illustrates not merely the extent to which a state may embarrass a railroad in the adjustment of its rates, but the helplessness of federal authorities, when, as a practical matter, it becomes necessary to increase rates. There is no doubt that the federal government has the power to regulate the interstate functions of carriers, but here is an instance where the federal authorities recognized the practical necessity of deferring to the state authorities and of permitting them to establish the standard of reasonableness of all rates, and thus to establish the standard of service.

THE NATION SHOULD DETERMINE THE STANDARD OF NATIONAL SERVICE

If the supreme authority over interstate rates thus finds itself embarrassed, how can it be expected that a railroad, which may derive all its corporate rights from a state, will feel free to ignore the mandates of the state even though legally permitted to do so? In order that regulation may be effective the federal authority must leave to the railroad no alternative but so to adjust its rates as to conform to the standard of reasonableness as determined by that authority. Under the law as it exists today the railroad has the alternative of conforming rates to meet the ideas of reasonableness of the state or of the nation. This means that if the nation establishes a standard of rates to meet its conception of the standard of service, the railroad may ignore such standard and adapt its service, both local and national, to conform to the ideas of the state authorities. This follows from the fact that there is no absolute standard of reasonableness of rates.[14] If there were such an abso-

[13] 4 N. H. P. S. C. Rpts., p. 89 *et seq.*; also 1 Mass. P. S. C. Repts. 92.

[14] That there is no absolute standard of reasonableness is recognized in the late case of the *American Express Company* v. *Caldwell*, 244 U. S. 617, where the court says:

"But the finding that discrimination exists and that the interstate rates are reasonable does not necessarily imply a finding that the intrastate rates are unreasonable. Both rates may lie within the zone of reasonableness and yet involve unjust discrimination."

lute standard, then unquestionably the standard as determined by the national authorities would have to prevail in all national transportation. If a schedule of rates escapes confiscation—that is, if it yields a fair return upon the value of the property—it cannot be set aside by any court. But such a standard of rates may be entirely inadequate to give to the public a service which the public demands or which the national authorities deem necessary for the national needs. The national authorities may deem it necessary that railroads should increase their trackage, enlarge their terminals and provide additional equipment; the state authorities may regard the present facilities as adequate. The national authorities establish rates which will give to the railroads sufficient credit to enable them to raise the money for these extensions and improvements; the state authorities refuse an increase in rates on the ground that the present rates yield a fair return and that it is not necessary to increase facilities, and thus increase rates. The standard of rates determined by the federal authorities is reasonable from the point of view of the nation; the standard of rates determined by the state authorities is reasonable from the point of view of the state. If in consequence of these two standards discrimination exists against interstate traffic, under the law as it stands, the railroad may adopt either standard. Such an option ought not to be given. It should not be in the power of the railroad which seeks to avoid the ill will of the state to deprive the nation of that standard of transportation which it desires.

There is a fundamental reason why two standards of rates, and consequently two standards of service, cannot be maintained. If the nation establishes one standard and the state establishes another standard, with rates adapted to meet the two standards, the state in its transportation nevertheless uses the facilities which are employed in interstate transportation. There cannot be separate trains or separate cars or separate roadbeds, and if the nation establishes one basis the state gains the benefit of such standard without contributing its fair share to its maintenance. The state which is satisfied with a low standard of service profits at the expense of other states with higher standards of service, and at the expense of all those who ship in interstate commerce.

INTERSTATE COMMERCE COMMISSION CAN INVESTIGATE ONLY THE RATES COMPLAINED OF

The inadequacy of the remedy, which is directed simply against unjust discrimination, is further illustrated by the limitations under which the Interstate Commerce Commission acts. It can direct its investigation only against the rates complained of. In the South Dakota Express case[15] the complaint was directed to the discrimination against shipments from Sioux City, Iowa, and the Express Company had authority under order of the Commission to change only the rates applicable to Sioux City, although the same discrimination existed throughout that territory. The effect of the order was to place that city in a preferential class and thus in reality to accentuate the discrimination. The Illinois Passenger Case,[16] recently decided by the Supreme Court, affords striking illustration of the inadequacy of the present remedy. A rate of two cents a mile was established by the Illinois Legislature. The interstate rate was two and a half cents a mile. Under these rates the fare from Chicago to East St. Louis, Illinois, was $5.62, and to St. Louis, Missouri, only nine miles farther, $7.50. The Commission found that a discrimination existed and that 2.4 cents was a reasonable rate for both classes of traffic. The railroads attempted to put in force a 2.4 cent rate throughout Illinois, but the court held that it could do this only as to those points which had been the subject of the complaint.

INTERSTATE COMMERCE COMMISSION MUST COMPLY WITH THE REQUIREMENTS OF DUE PROCESS OF LAW

Furthermore, the investigation must be conducted in such a way as to conform strictly to the constitutional requirements of due process of law; that is, a public hearing must be held, of which all parties in interest must be notified, evidence must be received, and the finding based on the evidence, and only upon the evidence offered at the public hearing.[17]

Even if the carrier had the power to initiate a complaint before the Interstate Commerce Commission, based upon alleged dis-

[15] *American Express Co.* v. *Caldwell* (*supra*).

[16] *Illinois Central Railroad* v. *Public Utilities Commission* (Jan. 14, 1918).

[17] *Interstate Commerce Commission* v. *Louisville and Nashville Railroad*, 227 U. S. 88 (1913).

criminatory state-made rates, it would be compelled to try out that issue under the forms of judicial procedure, involving indeterminable delay, because of the necessity of a judicial determination by the Commission. If the Commission had the exclusive power over all rates, the carrier could adjust its tariffs so as to remove the discriminations, and the rates would become effective after the Commission had given its approval. There would be no necessity for a judicial trial. Before the amendment of August 9, 1917, the rates would become effective, unless suspended by the Commission; under that amendment they become effective "after approval thereof has been secured from the Commission." In other words, the Commission acts in a strictly administrative manner, issuing no order and making no judicial determination, but exercising its judgment as an expert body especially charged with the protection of the public interests.

RATES INEXTRICABLY INTERWOVEN

An important practical reason why there should be a single control over rates is because rate structures are the most delicately adjusted mechanism. A change in a single rate may compel changes in thousands of rates in order to meet competitive conditions or to prevent discrimination. What has been said about the effect of state-made rates in Minnesota illustrates this. A most striking instance of the effect of the change in a single rate upon many rates is afforded by a case recently heard before the Public Service Commission of Pennsylvania.[18] This case has not yet been decided but the facts are taken from the testimony submitted. A complaint was filed attacking the rate on coal from Pittsburgh to Philadelphia. There are in Pennsylvania, West Virginia, Ohio and Indiana, numerous districts producing coal which is sold by the operators in competition with each other. Coal may move from the same district over competing railroads. The marketing and transportation of coal therefore are highly competitive. A reduction of 15 cents a ton from Pittsburgh to Philadelphia was asked by the complainants. It appeared in testimony that such a reduction in this rate would compel reductions from practically all coal districts in the states mentioned on account of the exceedingly intricate competitive situation, and that the railroads would lose a revenue of ten million

[18] *Pittsburgh Coal Operators* v. *Penna. R. R. Co.*

dollars a year if this slight reduction were made in a rate between two intrastate points.

RATES MUST BE ADJUSTED WITH REFERENCE TO THE STANDARD OF SERVICE

Before the war the shipping public came to a realization that the important thing about transportation was adequate service. The railroads contended that they could not give the kind of service which the public demanded upon the basis of rates permitted by public authorities; that they were forced to economize in order to meet expenses and have some return for their stockholders; that the impairment of their earning power affected their ability to raise money for improving their facilities. Today, in time of war, there is only one demand—and that is to transport freight and passengers with promptness. Shippers even are begging the public authorities to grant increases in rates so that the railroads may properly perform their functions. To what extent the failure of the railroads is due to subjection to many masters it is not necessary to discuss. But the one thing which stands out clearly is that transportation is a national necessity and that there can be no different standards of services terminating at state lines. Federal authority must determine the standard, not only to meet the demands of national commerce in time of peace, but in its supreme responsibility to protect and equip the nation in time of war.

If this responsibility of determining the standard of transportation is national, then the power to regulate the revenues which are the only means of effecting the standard must be national. As facilities employed in intrastate transportation cannot be separated from the facilities employed in interstate transportation, the burden of maintaining the one must be the same as the burden of maintaining the other, and the burden and the incidence of the burden must be determined by the supreme authority.

The rate question is usually discussed by the public authorities as a thing to be determined by reference to about everything except that to which it is most related; namely, service. There are labored discussions as to whether a schedule of rates will yield a certain per cent upon an engineer's estimate of what it will cost to reproduce the property. That is something which concerns merely the protection of the private rights of the owners of the property—

it does not help in the slightest to protect the public in its right to an adequate service. There are elaborate computations which purport to give the cost of particular kinds of service. Such computations, made upon hypotheses which reflect merely the accountant's guesses or economic theories, are valueless in determining an adequate rate. Rates in one section of the country are compared with rates in another section, but no thought is given to the kind of service required in the different sections.

The result is that many tribunals acting upon as many theories of rate making determine standards of rates which tend to produce as many standards of service—not consciously, for rarely do they give any consideration to the supreme transportation function of service, but as a necessary result of fixing revenues to meet the theoretical ideas of what are, *per se*, reasonable rates.

To SUMMARIZE: Service is national. The standard of service must be determined by the national authority. That standard cannot be made effective without the necessary revenues, and the amount of such revenues must be determined by the same authority which sets the standard of service. As the Supreme Court said in the Shreveport Case (*supra*):

> It was recognized at the beginning that the Nation could not prosper if interstate and foreign trade were governed by many masters, and, where the interests of the freedom of interstate commerce are involved, the judgment of Congress, and of the agencies it lawfully establishes must control.